



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 22, 1995

Ms. Ann Diamond
Assistant District Attorney
Tarrant County
Justice Center
401 W. Belknap
Fort Worth, Texas 76196-0201

OR95-1595

Dear Ms. Diamond:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31655.

Tarrant County (the "county") received two requests for information relating to a former county employee's personnel file and a current county employee's personnel file. You state that most of the information has been released except for the specific deletions that the county and the requestors agreed upon. The only information in dispute is the addresses and phone numbers provided to the county for emergency notification purposes. You contend this information is excepted from required public disclosure under sections 552.024, 552.101, 552.102, 552.111, 552.117 of the Government Code.¹

¹We note that the open records laws were substantially amended by the Seventy-fourth Legislature. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5127 (Vernon) (to be codified as amendments to Gov't Code ch. 552). The amendments to chapter 552 "affecting the availability of information, the inspection of information, or the copying of information, including the costs for copying information, apply only to a request for information that is received by a governmental body on or after September 1, 1995." *Id.* § 26(a), 1995 Tex. Sess. Law Serv. at 5142 (Vernon). A request for information that is received by a governmental body prior to September 1, 1995, is governed by the law in effect at the time the request is made. *Id.*

Section 552.111 excepts “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” Section 552.111 excepts from public disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. Open Records Decision No. 615 (1993) at 5. The policymaking functions of an agency, however, do not encompass routine internal administrative and personnel matters. *Id.* Furthermore, section 552.111 does not except purely factual information from disclosure. *Id.*

The information at issue is not only part of the routine internal administrative and personnel matters of the county, but it is purely factual information. This information is not excepted under section 552.111 of the Government Code.

Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” In order for information to be protected from public disclosure under the common-law right of privacy as incorporated by section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov’t Code § 552.101). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Section 552.102 excepts:

(a) . . . information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee’s designated representative as public information is made available under this chapter.

(b) . . . a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.²

Section 552.102 protects personnel file information only if its release would cause an invasion of privacy under the test articulated for common-law privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.) (court ruled that test to be applied in decision under statutory predecessor to § 552.102, was the same as that delineated in *Industrial Found.* for statutory predecessor to § 552.101). Accordingly, we will consider the arguments for withholding information from required public disclosure under section 552.101 and section 552.102 together.

You claim that “[p]roviding this information is a clearly unwarranted invasion of personal privacy” and that “the release is of no legitimate public concern.” Disclosure of a person’s name, home address, and phone number is not an invasion of privacy, Open Records Decision No. 554 (1990), and therefore, no balancing is necessary between privacy interests and information that is of legitimate public concern; this information is not protected as to applicants, probationers, or private citizens, Open Records Decision Nos. 478 (1987), 455 (1987). Disclosure of such information may be prevented only by demonstrating the special circumstances outlined in Open Records Decision No. 169 (1977) (copy enclosed). *See* Open Records Decision No. 264 (1981). The county has not raised any special circumstances to prevent the disclosure of this information, nor have any of the interested third parties.

Finally, you claim the requested information is made confidential by law because section 552.117(1) of the Government Code, after compliance with the provisions of section 552.024, protects the home addresses and telephone numbers of current or former public employees.

Section 552.117(1) of the Government Code excepts from public disclosure:

The home address or *home telephone number* of:

(A) *a current or former official or employee of a governmental body*, except as otherwise provided by Section 552.024; or

²Act of May 4, 1993, 73d Leg., R.S., ch. 268, § 1, 1993 Tex. Gen. Laws 583, 599-600, *amended* by Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 6, 1995 Tex. Sess. Law Serv. 5127, 5130-31.

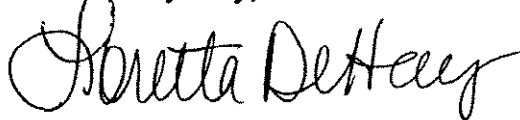
(B) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.³ [Emphasis added.]

In pertinent part, section 552.117 excepts from disclosure the home addresses and telephone numbers of all peace officers, as defined by article 2.12 of the Code of Criminal Procedure, and the home addresses and telephone numbers of all current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024.

You claim, however, that the use of the term "home" in sections 552.024 and 552.117(1) should be read as denoting "family" rather than a building or residence. The rules of statutory construction provide that unless defined elsewhere in a statute words should be given their ordinary meanings. Gov't Code § 312.002(a). The dictionary defines "home" as "a : one's place of residence: DOMICILE b : HOUSE." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 577 (1987). Moreover, the legislature in enacting section 552.117 obviously considered the use of the term "home" to denote the employee's own residence, because subsection (2) of section 552.117 expressly excepts "the home or employment address or telephone number, name, or social security number of a *family member* of" an employee of the Texas Department of Criminal Justice. Gov't Code § 552.117(2) (emphasis added). Accordingly, you may not withhold the requested information under section 552.117 of the Government Code. The county must promptly release the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

³*Id.* at 601-02, amended by Act of May 29, 1995 74th Leg., R.S., ch. 1035, § 9, 1995 Tex. Sess. Law Serv. 5127, 5132. We note that amendments to section 552.117 added an exception for information revealing whether a current or former official or employee of a governmental body or a peace officer/security officer, as defined by that section, has family members. This ruling does not address whether the requested information would be excepted under section 552.117 for a request for information made on or after September 1, 1995.

LRD/LBC/rho

Ref.: ID# 31655

Enclosures: Open Records Decision No. 169 (1977)
Submitted documents

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